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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

AMENDMENT OF THE COMMISSION'S
RULES TO PROVIDE CHANNEL EXCLUSIVITY
TO QUALIFIED PRIVATE PAGING SYSTEMS
AT 929-930 MHZ

PR Docket No. 93-35

To: The Commission

RESPONSE TO COMMENTS

Arch Communications Group ("Arch"), by its attorneys and pursuant to the Commission's Public Notice, Report No. 1999 (Erratum), released March 11, 1994^{1/}, hereby responds to various comments that have been filed in reference to the petitions for clarification and/or reconsideration that are pending in this proceeding.^{2/} In response, the following is respectfully shown:

^{1/} 59 Fed. Reg. 12327 (March 16, 1994).

^{2/} Seven parties filed petitions for reconsideration and/or clarification of the Exclusivity Order: Carl N. Davis d/b/a Afro-American Paging ("Davis"); American Mobilephone, Inc. ("AMI"); First National Paging Company, Inc. ("First National"); MAP Mobile Communications, Inc. ("MAP"); Metrocall, Inc. ("Metrocall"); the Association for Private Carrier Paging Section of the National Association of

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I. A Consensus has Emerged on Several Key Issues

1. Arch filed comments in this proceeding on March 9, 1994. The Arch comments supported several proposed modifications of the exclusivity rules, including: (a) a transition period during which incumbent licensees may convert existing systems utilizing multi-frequency transmitters to the use of dedicated transmitters while retaining exclusivity; (b) an extension of the "slow growth" option to incumbent licensees and, in certain circumstances, waiver of the obligation to provide a performance bond or place in an escrow account an amount equal to the construction cost estimate; (c) amendments to the regional PCP system exclusivity eligibility criteria to permit operators to achieve regional exclusivity on a statewide basis, rather than on a protected contour basis; and, (d) an increase in the power level for regional systems to 3500 watts ERP.

2. The comments filed by others in the proceeding largely support Arch's position. For example, API supports the establishment of extended implementation options for incumbent operators, and the proposal to use state boundaries as the basic building blocks in defining a regional system.^{3/} CelPage also

^{2/}(...continued)

Business and Educational Radio, Inc. ("APCP"); and Paging Network, Inc. ("PageNet"). Six parties commented on the petitions: American Paging, Inc. ("API"), Arch, CelPage, Inc. ("CelPage"), PacTel Paging (now "AirTouch"), AMI and American Digital Communications, Inc. ("ADC").

^{3/} API Comments, Sections 1 and 2.

supports extended implementation for grandfathered licensees, and endorses the proposal to allow high-powered (3500 watts ERP) stations within regional systems.^{4/} Pactel (now AirTouch), in addition to concurring on the foregoing issues, agrees with Arch that a sufficient transition period is needed for grandfathered licensees to convert from the use of multiple-frequency transmitters to dedicated transmitters.^{5/}

3. In sum, the petitions for reconsideration and/or clarification and the associated comments reflect a substantial consensus on manners in which the exclusivity rules can be adjusted to better serve the public interest. The Commission should give substantial weight to this industry consensus which emanates from knowledgeable carriers with substantial records of public service.

**II. State Boundaries Should be Used to Define
Regional Exclusivity Areas Notwithstanding
the Comments of AMI and ADC**

4. Two sets of comments were filed which either partially oppose, or seek clarification of, the APCP request that regional systems be granted exclusivity based upon state boundaries rather than transmitter contours: (a) the "Partial Opposition To, Or Comments On, APCP Petition for Reconsideration" filed by AMI on March 31, 1994 (the "AMI Comments"); and, (b) the

^{4/} CelPage Comments, Sections IV and VII.

^{5/} PacTel Comments, Section II.

"Comments of American Digital Communications, Inc." also filed on March 31, 1994 (the "ADC Comments").

5. AMI and ADC each face specific licensing situations they fear will be compromised by a rule change redefining the protected regional territories. For example, AMI claims that it qualifies under the current rules for regional exclusivity on the frequency 929.8125 MHz based upon transmitters in the six contiguous states of Florida, Georgia, Tennessee, Alabama, Mississippi and Louisiana. Its transmitters in Florida are located in the Florida panhandle, and do not include the top thirty markets of Miami or Tampa. Under the current rules, AMI would be the exclusive 929.8125 MHz licensee within seventy miles of any of AMI's Florida panhandle transmitters.

6. AMI is concerned that another carrier who elects to serve Miami and Tampa on the frequency 929.8125 MHz could qualify for "statewide" exclusivity under a revised regional exclusivity definition.^{6/} AMI fears that this later exclusivity grant might serve to strip AMI of the protection it now is expecting in the area of its current operations.

7. Similarly, ADC is concerned that a statewide grant of exclusivity to another carrier would preclude it from adding the transmitters to a small system it is acquiring that are necessary to qualify the small system for local exclusivity protection.^{7/}

^{6/} AMI Comments, Sections I and II.

^{7/} ADC Comments, p. 2.

8. In Arch's view, these isolated incidents of concern should not be allowed to derail APCP's meritorious proposal for redefining regional exclusivity protection. The record contains overwhelming support for statewide licensing. The core reason for the change is to accord wide-area system operators the flexibility they need to allow their systems to evolve over time to meet changing subscriber demands.

9. Rather than responding to the AMI and ADC concerns by modifying the proposed APCP definition of regional exclusivity, the Commission should adopt the change proposed by APCP and others, and invite parties who believe they are prejudiced by the change to submit individual waiver requests. For example, it appears that both AMI and ADC could protect their interests by seeking a partial waiver of the October 14 grandfather deadline and adding transmitters to their systems sufficient to qualify for local exclusivity in the areas of their interest. Arch understands that others already have sought waivers of certain aspects of the exclusivity rules based upon their individual circumstances. Unique and isolated circumstances such as those face by AMI and ADC are appropriately dealt with on a waiver basis.

Conclusion

10. The foregoing premises having been duly considered, Arch Communications Group respectfully submits that

the rules governing PCP exclusivity requests be revised as set forth in the company's comments and this response.

Respectfully submitted,

Arch Communications Group

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April 11, 1994

CERTIFICATE OF SERVICE

I, Tana Christine Maples, a secretary in the law firm of Bryan Cave, hereby certify that on this 11th day of April, 1994, a copy of the foregoing **RESPONSE TO COMMENTS** was sent by hand delivery or first-class mail, postage pre-paid to each of the following:

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